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Supreme Court of the United States

OCTOBER TERM, 1904

No. 138.

SUSAN A. RAMSAY, PLAINTIFF IN ERROR,

vs.

THE TACOMA LAND COMPANY; and PHILADELPHIA TRUST, SAFE DEPOSIT & INSURANCE COMPANY and JOHN C. BULLITT, Trustees of the Estate of Charles B. Wright, deceased, DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

BRIEF OF DEFENDANTS IN ERROR

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MOTION TO DISMISS OR AFFIRM PENDING.

The defendants in error have filed a motion to dismiss or affirm, together with a brief in support thereof, which has been submitted to the court by the parties; but decision on the motion has been postponed by the court until the cause is reached for hearing on the merits. De-

fendants in error, without waiving, but still relying on, their motion, submit their brief on the merits.

STATEMENT.

This is a suit in equity, commenced by plaintiff in error, praying that she be decreed to be the owner of certain lands, which had been conveyed by patent of the United States to the Tacoma Land Company, and that said Company, and its grantees, defendants in error herein, be decreed to be trustees of the title thereto for plaintiff in error, and be required to convey the land to her.

The land in controversy is situate in Pierce County, Washington, and was located within the primary limits of the grant of lands made to the Northern Pacific Railroad Company by joint resolution of Congress of May 31, 1870 (16 Stat., 378), for that portion of its line of railroad between Portland and Puget Sound. (Record, pp. 17, 57.) The railroad company on August 13, 1870, filed its map of general route of its railroad, and on May 14, 1874, filed its map of definite location thereof in the office of the Secretary of the Interior (Record, pp. 17, 57); and pursuant thereto the Land Department withdrew and reserved from sale and entry the odd numbered sections of land within the limits of said land grant, including the land involved herein, for the benefit of said land grant (Record, p. 18); and thereafter said land was held by the railroad company and considered by the Land Department to have passed to the railroad company under said grant until the cancellation of the railroad company's selection and listing of the land by the Commissioner of the General Land Office on October 13, 1896, based on the decision of the Land Depart-

ment in case of *Corliss vs. Northern Pacific R. R. Co.* Until that date, October 13, 1896, the withdrawal and reservation of the land continued in force unrevoked. (Record, pp. 18, 57.)

In December, 1874, the Northern Pacific Railroad Company, for value, in good faith, and believing that it had title to said land, sold and conveyed the land by deed to the Tacoma Land Company, which was a corporation duly organized and existing under the laws of the State of Pennsylvania; the Land Company purchased the land for value and in good faith; and said deed was on March 10, 1875, filed for record and recorded in the office of the Auditor of Pierce County, Washington (Record, pp. 18, 23). Thereafter the Land Company, for value and in good faith, sold and transferred the land by mesne conveyances to the other defendants in error herein, who also purchased in good faith and for value; and said Land Company, and its grantees thereunder, took possession of the land, claimed title thereto, and exercised ownership thereof.

On March 3, 1887, Congress passed an act (24 Stat., 556) for the relief of *bona fide* purchasers of land from land grant companies whose title should fail by reason of the land so purchased by them being thereafter determined and held to be excepted from such land grant, and giving to such purchasers the right to enter and purchase such land at the ordinary price, and receive patent therefor.

Thereafter, in 1896, in a contest pending before the Land Department between other parties, it was determined and held by the ruling and decision of the Land Department that this land did not pass to the railroad company under its land grant, but was excepted therefrom, by rea-

son of the existence of an uncancelled of record pre-emption entry on the land at the date of the grant (Record, p. 21); and on October 13, 1896, the selection and listing of the land by the railroad company as a part of its grant was cancelled by the Land Department. (Record, p. 16.)

The title of the railroad company, and of its grantee, Tacoma Land Company, having thereby failed, the right of the Tacoma Land Company to purchase the land as a *bona fide* purchaser thereof from the railroad company, attached to the land under the provisions of Section 5 of the act of March 3, 1887 (Record, p. 58); and in exercise of that right the Tacoma Land Company, on August 27, 1897, filed in the local land office its application to purchase the land under Section 5 of that act. (Record, pp. 4, 20.)

The plaintiff in error, on February 24, 1897, filed in the local land office her application to enter the land as a homestead, but she did not go on the land until May 31, 1897, when she began certain improvements, and has since resided thereon. (Record, p. 18.) A contest ensued before the Land Department involving the right of the Tacoma Land Company to purchase the land under Sec. 5 of the act of March 3, 1887, wherein the Commissioner on September 26, 1899, rendered his decision, affirming the decision of the local land office, awarding the land to the Land Company, and ordering cancelled the homestead entry of plaintiff in error for conflict with the superior right of the Land Company to the land. (Record, pp. 16-20). Plaintiff in error appealed from that decision to the Secretary of the Interior, who on July 10, 1900, affirmed the decision of the Commissioner (Record, pp. 21-25); and pursuant thereto on October 4, 1900, the homestead entry was cancelled, the

cash entry of the land by the Land Company was approved for patent (Record, p. 26), and on February 20, 1901, a patent was issued by the United States to the Land Company for the land.

The trial court overruled a demurrer to the amended complaint in this cause (Record, pp. 27-28), and issues were formed by answer and reply filed (Record, p. 28-35). Upon the trial, the cause was submitted to the court substantially upon the facts found by the Land Department as set forth in its decisions attached to the amended complaint (Record, pp. 16-26), and the trial court rendered its judgment and decree in favor of plaintiff in error (Record, p. 46), from which judgment and decree the defendants in error appealed to the State Supreme Court, where, upon hearing, the judgment and decree of the trial court were reversed, and the cause dismissed (Record, p. 57-60), to review which decision this writ of error was taken to this court.

ARGUMENT.

The plaintiff in error seeks in this suit to review the decisions of the Land Department, upon the ground that the Commissioner of the General Land Office and Secretary of the Interior erred in their decisions awarding the land to the Tacoma Land Company, based upon the facts found by them and set forth in their decisions. (Record, pp. 16-26.) The rights and claims asserted by the Land Company in this suit were fully heard and tried, the facts found and determined, and an adjudication made in its favor, by the decisions of the Land Department. Those findings and decisions as to all matters of fact, in the absence of fraud or imposition, which are not alleged in this

suit, are final and conclusive, and cannot be reviewed by the courts.

Carr vs. Fife, 156 U. S., 501.

Bardon vs. N. P. R. R. Co., 154 U. S., 327.

Steel vs. Refining Co., 106 U. S., 447, 451.

Lawrence vs. Potter, 22 Wash., 32, 36.

Vance vs. Burbank, 101 U. S., 519.

Whether a transaction was entered into in good faith, or with fraudulent intent, presents questions of fact, and in so far as those questions are involved, the conclusions of the Land Department are final.

Gertgens vs. O'Connor, 191 U. S., 241.

SUPERIOR RIGHT OF PURCHASE.

The Tacoma Land Company had a superior right to purchase the land under Sec. 5 of the act of 1887, quoted on page 58 of the record.

Defendants in error contend that this right to purchase from the United States, under Sec. 5 of said act, land purchased by the Land Company in good faith from the Railroad Company, whose title had failed, was superior to the common right of any person to enter the land under the general land laws; that the deed conveying the land to the Land Company then of record charged the plaintiff in error with notice of the Land Company's rights under the act of 1887; and any application of plaintiff in error

to enter the land was subject and inferior to this superior right of the Land Company.

We further contend that, under the provisions of Sec. 5 of the act of March 3, 1887, the Tacoma Land Company had a vested right to the land, growing out of its purchase and deed from the Railroad Company of December, 1874, which became perfect on October 13, 1896, when the railroad selection was cancelled, and which was paramount to any right the plaintiff in error could acquire by her entry or settlement commencing in 1897.

DECISIONS OF LAND DEPARTMENT.

The Land Department has uniformly in this case, and by its decisions in other like cases, construed Sec. 5 of the act of March 3, 1887, and recognized the right of purchase given thereby as such a "superior right." We ask the court to briefly note the decisions of the Commissioner and Secretary on this point:

"In support of its entry, the Land Company submits a verified copy of a deed made by the Railroad Company December 30, 1874, conveying the land in controversy to the Land Company for a valuable consideration, and in all other essential particulars meets the requirements of office regulations in the matter of final proof." (Record, p. 18.)

"As shown, the land was at the date of the Land Company's purchase within the limits reserved for the Railroad Company under the withdrawal on general route of August 13, 1870, and of definite location of May 14, 1874. As further shown, such withdrawal and reservation continued until the final elimination of the railroad claim under authority of the Department's decision of July 13, 1896, in the Corliss case. Its purchase of the land from

the Railroad Company, upon such a showing as to the status of the land, did not, therefore, evince bad faith on the part of the Land Company." (Record, p. 18.)

"The provisions of Section 5 of the act of March 3, 1887, under which said Company has applied to purchase, are remedial in their character, giving to those qualified, as therein prescribed, the right to purchase from the Government lands which they had theretofore bought in good faith from the Railroad Company as part of its grant, and which for any reason were excepted from such grant." (Record, pp. 24-25.)

"It is also apparent that if the Tacoma Land Company is qualified to purchase the said land under the provisions of said act, its rights thereto are superior to those of Ramsay under her entry and settlement made long after the passage of said act (*Skinvik v. Longstreet, et al.*, 22 L. D. 32)." (Record, p. 23.)

It was also found and determined that the land in question

"ever since 1874 had been held by said corporation under the deed of conveyance from the Railroad Company, and by the terms of the remedial statute hereinbefore mentioned * * * said corporation, if otherwise qualified as therein specified, was specifically given the right to purchase said land." (Record, p. 24.)

"The testimony submitted by her (Ramsay) does not in any manner contradict or traverse the proof submitted by the Land Company touching its qualifications to purchase the land in question under the provisions of Section 5 of the act of March 3, 1887, *supra*, by reason of its alleged purchase of said land from the railroad company on December 30th, 1874." (Record, pp. 22, 23.)

And the Secretary of the Interior, closing his decision, says:

"There is nothing in the record to indicate bad faith on the part of the Tacoma Land Company, and as the proof submitted in support of its application to purchase the land in controversy appears to be otherwise substantially in conformity to the requirements of your office and the department, no error is apparent in your decision." (Record, p. 25.)

In *Tacoma Land Co. vs. N. P. R. R. Co.* (26 Land Dec., 503), the Secretary of the Interior, construing this same Sec. 5 of the act of March 3, 1887, said:

"Upon the passage of that act, the Land Company's prior ineffectual purchase from the Railroad Company, if *bona fide*, was converted into a lawful right to purchase from the United States; and knowing that the land was claimed by the Railroad Company under its grant, and having at least constructive notice of its sale to the Land Company, as shown by the recorded deed, Shrives (the homesteader) could not thereafter initiate any settlement right which would defeat the Land Company's right to purchase under the 5th section of the act."

And the Land Department in that case held that the Tacoma Land Company had a "superior right of purchase" under the act of 1887 over a homestead claimant; that said act "had given vitality and force to rights like those of the Tacoma Land Company asserted under purchase of lands claimed under railroad land grants," and that the Land Company's ineffectual purchase from the Railroad Company "was converted into a lawful right to purchase from the United States," as against which the homestead claimant, "knowing that the land was claimed by the Railroad Company under its grant, and having at

least constructive notice of its sale to the Land Company," could not initiate any *bona fide* settlement right.

In *U. S. vs. Winona R. R. Co.*, 165 U. S., 463, the intent of Congress to protect as *bona fide* purchasers all persons who have purchased land from a land grant company, believing they thereby acquired good title, but whose title failed, was recognized, and the court said:

"Congress had in view the protection of other parties than those already protected by general laws."

"Congress attempted to protect an honest transaction between a purchaser and a railroad company, even in the absence of a certification or patent. These being the provisions of the act of 1887, the act of 1896, confirming the right and title of a *bona fide* purchaser, and providing that the patent to his lands should not be vacated or annulled, must be held to include one who, if not in the fullest terms a *bona fide* purchaser, has nevertheless purchased in good faith from the railroad company. Our conclusion is that these acts operate to confirm the title of every purchaser from a railroad company of lands, certified or patented to or for its benefit, notwithstanding any mere errors or irregularities in the proceedings of the land department, and notwithstanding the fact that the lands so certified or patented were, by the true construction of the land grants, although within the grants, excepted from their operation, providing that he purchased in good faith, paid value for the lands, and providing also that the lands were public lands in the statutory sense of the term and free from individual or other claims."

The act of 1896, referred to by the court in the case last cited, was the act of March 3, 1896 (29 Stat., 42), which reinforced and confirmed the rights of purchasers under the act of 1887, and provided that:

"No patent to any lands held by a *bona fide* purchaser shall be vacated or annulled, but the right and title of such purchaser is hereby confirmed."

And the U. S. Circuit Court of Appeals, in *Wagstaff vs. Collins,* 97 Fed., 3, 8, reviewing the acts of March 3, 1887, and March 3, 1896, held that the words "*bona fide* purchaser" as used in those acts

"Were not used by Congress in any technical sense, but were intended by Congress to comprehend *all persons* who had bought land from a railroad company, paid value therefor, acting at the time under an honest belief that they were acquiring a good title."

"We think it was within the power of the legislative branch of the government to confirm the title of the purchasers from the railway company to the land in controversy, and that the act of March 3, 1887, was adequate to accomplish that object."

This court in the case of *Gertgens vs. O'Connor,* 191 U. S., 242, construing Sec. 5 of the act of March 3, 1887, said:

"We have more than once held that the entire statute was remedial in its nature, and must be construed so as to carry out the intent of Congress and secure to the parties the intended relief. * * * As to those who had dealt with the railway company, its evident purpose was to secure to them the lands they had contracted for, in so far as it could be done without trespassing on the rights of settlers."

"The rulings of the Land Department have been along the line of a recognition of the fact that attempts in good faith by a party to obtain from a railroad company for

bona fide settlements lands believed to belong to it, or expected to be acquired by it, present cases which were intended to be included within the act of 1887, and entitled to its protection." Citing land cases.

"Section 5 gave to Ireland (the purchaser from the railway company) only a right to purchase this land from the government—a preferential right—paying to the government its price, no portion of which was to pass to the railway company, and gave him that preferential right because of his dealings with the company. He had sought to obtain title to this land from the company. He had made a contract by which, if the company acquired title, he could obtain that title; and Congress, by Section 5, simply provided that, having so acted in respect to this land, he should have a preferential right of purchase. The company neither gains nor loses. The government receives its price for the land, and is, therefore, fully protected, and Ireland receives that in respect to which he certainly has some equitable claim of consideration, a preferential right of purchase."

RAMSAY ACQUIRED NO VESTED RIGHT AGAINST THE GOVERNMENT.

The plaintiff in error acquired by her settlement or homestead entry of the land no vested right thereto as against the right of the government to otherwise dispose of it.

Menotti vs. Dillon, 167 U. S., 721.

This principle was recognized and enforced in the case of *N. P. R. R. Co. vs. Amaker*, 175 U. S., 564, where it was held that the right of purchase given by an act of Congress is one preferred and protected as against the ordinary right of qualified citizens to purchase or enter pub-

lic lands under the general land laws; that the true construction of the land laws is that a *specified right* given to a limited class to take by purchase *particular tracts* is *superior* to the general right of all citizens to purchase public lands; and that lands subject to such preferred right of purchase were "appropriated lands," and no longer to be considered public lands subject to the usual right of entry. And, in this case, the Land Department held that the Tacoma Land Company "was specifically given the right to purchase said land." (Record, p. 24.)

The 5th section of the act of March 3, 1887, recognized and provided for a class of claimants for lands of the character to which it applied, whose rights could not be affected by subsequent settlement of others on the land, even if there were no withdrawal. Lands affected with the conditions mentioned were appropriated by the terms of that section to this class of claimants. The right of purchase conferred by this act, thus absolute in its terms, was indivestable by one who went upon the land after 1887, whether before or after the railroad claim was cancelled, unless the railroad's grantee should lose by laches his prior right thus conferred.

Whatever may have been the possessory rights of plaintiff in error as against other claimants under the ordinary land laws, such rights could not avail against the right of Congress to confer the land upon other parties.

Gonzales vs. French, 164 U. S., 338, 345.

As was said in the case last cited, quoting from *Shepley vs. Cowan*, 91 U. S., 330: "The settlement, even when accompanied with an improvement of the property, did not confer upon the settler any right in the land *as against the*

United States, or impair in any respect the power of Congress to dispose of the land in any way it might deem proper."

This rule, which had long been applied to pre-emption claimants, was applied to a homestead claimant in *Norton vs. Evans*, 82 Fed. (C. C. A.), 804, 807, holding that a homestead entry creates no vested rights as against the United States, and does not interfere with the power of Congress even by subsequent legislation to dispose of the land, and certainly not by legislation prior to the inception of the alleged homestead right.

Wagstaff vs. Collins, 97 Fed., 3, 8.

Shiver vs. U. S., 159 U. S., 491.

RAMSAY WAS NOT A *BONA FIDE* SETTLER.

The plaintiff in error was not a settler upon the land "in good faith" within the meaning of the land laws and decisions. She had knowledge and was charged with notice:

Of the grant to the Railroad Company;

Of the reservation and withdrawal of the land by order of the Land Department for the benefit of the grant;

Of the sale and conveyance to the Land Company by deed of record;

Of the Land Company's right to purchase under the act of 1887;

Of its possession and conveyance to its grantees.

With such knowledge and notice, her attempt to enter the land as a homestead was not made in good faith, and was subject to the superior right of the Land Company and its grantees.

A settlement or entry made "in good faith" has been defined to be one made "in ignorance of any right or claim of a third party."

2 Am. & Eng. Ency. of Law, 1st ed., 444.

"By 'good faith,' as judicially interpreted, is meant a purchase made not merely for a consideration, but also without notice to the purchaser of an adverse claim to the property by others; for 'the taking an estate after notice of a prior right makes one a *mala fide* purchaser'."

Bracka vs. Fish, 23 Wash., 653, and cases cited.

Wood vs. Beach, 156 U. S., 551.

Tacoma Land Co. vs. N. P. R. R. Co., 26 Land Dec., 503.

The Commissioner, in his decision (Record, bottom p. 18), states the facts on this point as follows:

"It appears that her settlement and improvement were not only begun on the land June 1, 1897, subsequent to the date (February 24, 1897) of her entry, but long after said company had purchased the land from the Railroad Company."

And the Commissioner then quotes the ruling of the Land Department from *Holton vs. Rutledge*, 20 L. D., 227, as follows:

"A settlement claim acquired after the passage of the act of March 3, 1887, and subsequent to the sale of the land by the Railroad Company, will not defeat the right of the purchaser, or his transferee, to perfect title under the provisions of Section 5 of said act."

The record in this cause discloses that the plaintiff in error stands in no more favorable situation, and is no more a settler in good faith, than the attempted homesteader in the case of *Gertgens vs. O'Connor,* 191 U. S., 246, of whom this court said:

"It (the land involved) had been withdrawn from entry under the land laws, and that fact appeared on the records of the local land office. It had, in fact, been selected by the company, and that selection had not been cancelled. Ireland's contract of 1883 was of record in the office of the register of deeds of the county, and shown on the books of the company. The defendant applied for leave to enter the land as a homestead, and was denied such leave by the local land officers on the ground that it was within the twenty-mile indemnity limits of the railway company's grant, and had been selected by the company. He was charged with knowledge of the act of Congress giving a preferential right of purchase from the government in case the company's title should in any way fail. Notwithstanding all this, he remained upon the land and put his improvements on it, and now claims to be entitled to the rights of a *bona fide* settler. He does not come within the letter of the statute, nor does he come within the reach of any reasonable equities. He evidently took his chances on the possibility of the company's failing to obtain title and a subsequent failure of Ireland to insist upon his preferential right of purchase. He went upon the land with full knowledge of all the facts, which showed that he had no right to enter, speculating upon possibilities which have not been realized, and, having so speculated, he can not complain if he suffer the consequences which often attend the failure of a speculation."

The decision quoted appears to so completely fit the facts of this case, and settle the status of the plaintiff in error, as attempting to enter the land with notice of the prior rights of the Tacoma Land Company, and not in good faith, that no further argument or authority should be necessary.

PURCHASE BY TACOMA LAND COMPANY WAS NOT UNREASONABLY DELAYED.

The Tacoma Land Company did not unreasonably delay the exercise of its superior right to purchase the land. Its application to purchase was made in August, 1897, about ten months after the Railroad Company's listing and selection of the land was cancelled, on October 13, 1896. Upon this point the Commissioner said (Record, p. 18):

"As shown, the land was at the date of the Land Company's purchase within the limits reserved for the Railroad Company under the withdrawal on general route of August 13, 1870, and of definite location of May 14, 1874. As further shown, such withdrawal and reservation continued until the final elimination of the railroad claim under authority of the Department's decision of July 13, 1896, in the Corliss case. Its purchase of the land from the Railroad Company, upon such a showing as to the status of the land, did not, therefore, evince bad faith on the part of the Land Company."

After the passage of the act of March 3, 1887, the cancellation of the Railroad Company's right to any lands included in a pre-existing land grant would not restore such lands to the public domain, as against such purchaser.

The complaint in this cause does not allege, nor does the record disclose, any cancellation *at any time* of that

withdrawal and reservation, or any restoration of the land to the public domain; and such withdrawal and reservation, therefore, continued in force at least until the cancellation of the Railroad Company's listing and selection of the land on October 13, 1896. Until that date the land was in like condition with the land involved in the case of *Gertgens vs. O'Connor,* 191 U. S., 246:

"It had been withdrawn from entry under the land laws, and that fact appeared on the records of the local land office. It had, in fact, been selected by the company, and that selection had not been cancelled."

It has been uniformly held by the Land Department, and instructions were accordingly issued to the local land offices,that under Sec. 5 of the act of March 3, 1887,

"No entries would be allowed under said section until it should be finally determined by the Department that the land was excepted from the railroad grant."

Union Colony vs. Fulmele, 16 Land Dec., 276.

And that until the Land Department had "formally held that it did not pass to the State, no application would be received by the local officers."

Simpkins vs. Hays, 15 Land Dec., 293.

In *Tacoma Land Company vs. Shrives,* decided Sept. 20, 1895, the Commissioner, passing upon this same question, said:

"Nor can laches in the presentation of its claim be attributed to the Land Company, as further insisted by the adverse applicants, as it appears that within a reasonable

time after the promulgation of the Barden decision the company presented its application to purchase. Before that decision, when the land was held to be railroad land, such an application *would have been premature.*"

And in the same case, on appeal, the Department held that at no period prior to the rendition of the final ruling of the Department "was there any ground for the presentation of an application for the land, which under the decisions in force up to that time was held to be subject to the railroad grant."

In the case of *Nicholas Cochems,* 11 Land Dec., 629, it was held that an application to purchase under Sec. 5 of the act of March 3, 1887, would not be entertained until the Department had finally determined that the land was in fact excepted from the railroad grant; and, further, that

"By decision of this Department of June 23, 1888 (6 L. D., 816), lands of this class were *continued in reservation* 'pending adjudication by the courts, or until such time as the Department may deem it proper to remove the reservation'."

In *Hamblin vs. Western Land Co.,* 147 U. S., 531, it is held that a reservation of public lands from entry, made by the Department of the Interior as coming within the limits of a railroad grant, operates to withdraw the land from homestead entries, even if afterwards found not to come within such limits.

The land was appropriated and reserved from homestead settlement or entry by the withdrawal by the Land Department (Record, p. 18), and such withdrawal and reservation had the same force and effect to remove the land from public lands subject to pre-emption or homestead

under Secs. 2258 and 2289, U. S. R. S., as if the withdrawal had been made by a proclamation of the President (*Wood vs. Beach*, 156 U. S., 550), and after the amended homestead law went into effect in 1891 (Sec. 4, Act of March 3, 1891, 26 Stat, 1097) the land was not "unappropriated public land" within the meaning of that act as construed by the Land Department and the courts.

King vs. McAndrews, 104 Fed., 430, 437.

Barbour vs. Wilson, 23 Land Dec., 466.

Menotti vs. Dillon, 167 U. S., 721.

The land was, therefore, reserved and appropriated land within the meaning of the land laws at least until October, 1896; prior thereto and prior to its restoration to public entry it became subject to the right of the Tacoma Land Company to purchase under Sec. 5 of act of 1887; and thereafter, and within a reasonable time, the Land Company applied to purchase under that act.

The land laws allowed a pre-emptor twelve months after date of settlement in which to make his proof and payment. (Record, p. 16.)

In this connection we desire to call the attention of the court to the order of Secretary Vilas, as reported in 8 Land Dec., 27, 29, where he says:

"Inasmuch as the privilege conferred by this act is but a preferred right of purchase—a special pre-emption right—which would be perfected by the payment of the price of the land and the issue of cash entry certificate, as in pre-emption entries, it would seem eminently proper to

adopt the same method of procedure, so far as applicable, as is used in making final proofs in that class of cases."

In view of the liberal purposes and provisions of this act of 1887, a delay of ten months by the Land Company, within which to exercise the right of purchase given to it, was not an unreasonable delay in exercising this right given by a remedial law enacted for the protection of *bona fide* purchasers, and that act should be liberally construed for their protection, so as to effectually meet the beneficial end in view and prevent a failure of the remedy.

Potter's Dwarris on Statutes, p. 231.

The claim and argument of plaintiff in error that the Tacoma Land Company lost or waived its right to purchase the land under Sec. 5 of the act of March 3, 1887, by its delay in making application to purchase, is fully answered by the language of the Commissioner in his decision (Record, p. 20):

"Miss Ramsay's eighth and last assignment of error, that the Land Company had been guilty of laches in delaying its application for more than ten years after the passage of said act, is not sustained by the records, which disclose that its application was presented (August 27, 1897) within less than a year after the decision of the Department in the Corliss case, holding that the land was excepted from the railroad grant, had been declared final by this office on October 13, 1896."

TACOMA LAND COMPANY WAS QUALIFIED TO PURCHASE.

The only personal qualification of purchasers under Sec. 5 of the act of March 3, 1887, was that they should be

"citizens of the United States, or persons who have declared their intention to become such citizens." The Tacoma Land Company was a corporation organized under the laws of the State of Pennsylvania, and as such was a "citizen" of the United States within the meaning of Sec. 5 of the act of March 3, 1887.

The Commissioner in his decision in this case, Exhibit A, so held (Record, p. 19), and upon appeal therefrom the Secretary of the Interior sustained that decision, Exhibit B (Record, p. 23). This point was contested by plaintiff in error before the trial court, who sustained the decisions of the Land Department. The question should require no further argument, as it has long been the settled and uniform decision of the Land Department and of the courts in many cases.

Gasper vs. St. Louis Power Co., 22 Land Dec., 587.

Nevada Southern Ry. Co., 22 Land Dec., 1.

Miller vs. Tacoma Land Co., 29 Land Dec., 633.

Tacoma Land Co. vs. N. P. R. R. Co., 26 Land Dec., 503.

Minn. & St. L. Ry. Co. vs. Beckwith, 129 U. S., 28.

Charlotte R. R. Co. vs. Gibbes, 142 U. S., 391.

Shaw vs. Quincy Mining Co., 145 U. S., 444.

Smyth vs. Ames, 159 U. S., 466.

Pembina Mining Co. vs. Penn'a, 125 U. S., 181.

Santa Clara Co. vs. So. Pac. R. R. Co., 118 U. S., 396.

North Noonday Mining Co. vs. Orient Mining Co., 1 Fed. Rep., 522.

U. S. vs. Northwestern Express Co., 164 U. S., 686.

In the last case cited, the court held that "such corporations were within the purview of the words as used in the remedial act." The act of 1887 was a remedial act of like character to that discussed in the case cited; it was enacted that its citizens might "be made whole for the losses they might have sustained" by failure of their title to lands purchased from companies holding same (as then supposed) by grant from the United States; and the provisions of such remedial act should be liberally construed.

In the case of *Bishop Iron Co. vs. Hyde*, 66 Minn., 24, 31, which was affirmed by this court, 177 U. S., 281, the court, citing *Vance vs. Burbank*, 101 U. S., 519, as its authority, said:

"The competency of the defendant to comply with the requirements of the pre-emption act—his qualification as a pre-emptor—*was a question of fact*, peculiarly for the determination of the officers of the Land Department. It has repeatedly been held that the decision of these officers is conclusive on a question of fact, in the absence of fraud."

LAND COMPANY MADE DUE PROOF OF RIGHT TO PURCHASE.

That the Tacoma Land Company made full and satisfactory proofs of its right to purchase the land is clearly

settled by the findings and decisions of the Land Department. The Commissioner held that the proofs submitted by the company by the Railroad Company's deed to it "and in all other essential particulars meets the requirements of office regulations in the matter of final proof" (Record, p. 18); and the Secretary in his decision (Record, p. 21) says: "Upon consideration of the proof submitted by said company, and the protest and evidence submitted by Ramsay, the local officers on October 15, 1897, found said proof satisfactory and allowed the same of record, cash receipt No. 1304 being issued thereon."

The Land Company being qualified as a citizen to purchase under Sec. 5 of the act of March 3, 1887, and having made full and satisfactory proofs, its title acquired by such purchase must be sustained.

The Tacoma Land Company's right to purchase and hold the land was not restricted by another act of March 3, 1887 (24 Stat., 476).

It was claimed by plaintiff in error at the trial and is argued here that the right of the Land Company to purchase and hold the land was restricted by Sec. 3 of an act of March 3, 1887 (24 Stat., 476), which provides:

"That no corporation, other than those organized for the construction or operation of railways, canals, or turnpikes, shall acquire, hold, or own, more than 5,000 acres of land in any of the *Territories* of the United States; and no railroad, canal or turnpike corporation shall *hereafter* acquire, hold or own lands in any *Territory*, other than as may be necessary for the proper operation of its railroad, canal or turnpike, except such lands as may have been granted to it by act of Congress. But the prohibition of

this section shall not affect the title to any lands now lawfully held by any such corporation."

This provision of law, however, was not in force in 1897, when the Tacoma Land Company purchased this land; but, even if it were, there is nothing in this case to show that the Land Company was a corporation of the class referred to, or that it held or owned any quantity of land, other than the land involved herein (Record, p. 24), or that this land was not held for the purposes allowed by the terms of the act; and the provision refers to land in the *Territories*, and does not affect any lands in the *State* of Washington, and affects at most only the right to *thereafter* acquire, hold or own lands, and did not affect any lands then lawfully held by such corporation. This land was then, in 1887, and had been since 1874, "lawfully held" by the Tacoma Land Company under its deed from the Railroad Company (Record, p. 24), whose right to the land was then recognized by the United States to be good. There is no limitation specified in the Sec. 5, under which the right to purchase was claimed, as to the quantity of land that could be purchased under it. (Record, p. 25.)

Further than this, this provision of law, above quoted, was amended by the substitute act of March 2, 1897 (29 Stat., 618), in which the prohibitory clause above quoted is entirely omitted. (Record, p. 24.) So that this restrictive provision, if it ever had or could have any reference to or effect upon the Tacoma Land Co., was not in force when it applied to purchase the land in August, 1897, and it was so held by the decisions of the Land Department. (Record, p. 25.)

As stated by the State Supreme Court in its decision (Record, p. 59), the facts in this case bring the defendants

in error strictly within the letter and spirit of the act of March 3, 1887; the Land Company had a preference right of purchase, and exercised that right within a reasonable time; and the Land Department correctly construed the law in so holding. That construction of Sec. 5 of said act was the sole question for review by the court in this cause, and its application to the right of the Land Company to purchase the land eliminated any question, construction or decision as to the homestead right of plaintiff in error; and we respectfully submit that the judgment of the State Supreme Court should be affirmed.

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